

DEC 04 2012

UNITED STATES COURT OF APPEALS

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

JESSE CLYDE BURLESON,

Petitioner - Appellant,

v.

DIRECTOR OF THE CALIFORNIA  
DEPARTMENT OF CORRECTIONS  
AND REHABILITATION,

Respondent - Appellee.

No. 09-17569

D.C. No. 4:08-cv-01853-SBA  
Northern District of California,  
Oakland

ORDER AMENDING  
MEMORANDUM AND  
DENYING PETITION FOR  
REHEARING

Before: TASHIMA, CLIFTON, and MURGUIA, Circuit Judges.

The memorandum disposition filed on August 3, 2012, is amended as follows:

Replace the paragraph at the bottom of page 2 and at the top of page 3, with the following:

First, the alternate trial strategy posited by Burleson, a theory of imperfect self-defense, would have required the jury to conclude that he actually believed he was in imminent mortal peril. *In re Christian S.*, 872 P.2d 574, 583 (Cal. 1994). But the evidence demonstrated that he went a block and a half away from the reported location of men he believed were coming to kill him, got a gun, called for assistance, repeatedly went outside even after seeing the men nearby, and “encountered” his victims

before shooting and killing one of them as he ran away. Based on that factual scenario, it is unlikely that every juror would have concluded that Burleson acted in self-defense, even if imperfect.

With the foregoing amendment to the memorandum disposition, Petitioner-Appellant's Petition for Panel Rehearing, filed on September 17, 2012, is DENIED. No further petitions for rehearing will be accepted in this case.